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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,959	10/30/2003	Craig C. Hodges	00020.08CON	8482
37485 7590 08/22/2007 SWANSON & BRATSCHEUN, L.L.C 8210 SOUTHPARK TERRACE LITTLETON, CO 80120			EXAMINER HAGHIGHATIAN, MINA	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 08/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/696,959	Applicant(s) HODGES ET AL.	
	Examiner Mina Haghighatian	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-30 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-30, 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of the Amendments, remarks and Terminal Disclaimers filed on 07/27/07. Claims 1 and 22 and claims 10 and 31 have been cancelled. No new claims have been added. Accordingly claims **1-7, 11-30 and 32-39** remain pending.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **1-7, 11-30 and 32-39** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. 6,797,259 and 6,814,955. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examined claims are either anticipated by, or would have been obvious over, the reference claims. Here claims **1-7,**

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11-30 and 32-39 are generic to all that is recited in claims of cited U.S. Patents. That is, claims of cited U.S. Patents fall entirely within the scope of claims **1-7, 11-30 and 32-39**, or in other words, claims **1-7, 11-30 and 32-39** are anticipated by claims of cited U.S. Patents. Specifically, the methods of preparing compositions of the instant claims are the same as or obvious over the compositions and methods of the cited U.S. Patents.

Claims **1-7, 11-30 and 32-39** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent Nos. and U.S. copending Applications listed below. The said patents and copending Applications have been found to claim substantially similar subject matter per the obviousness-type double patenting rejections made above in the instant office action, especially with regards to compositions and methods of making drug condensation aerosols. Furthermore, it appears that the invention is the condensate compositions and the method of making them. Thus it is considered that the substitution of various active agents does not alter the scope of the said claims.

U.S. Patent/Application Number	U.S. Patent/Application Number	U.S. Patent/Application Number	U.S. Patent/Application Number
1. 6,805,853 (Patent)	27. 7,052,679 (Patent)	53. 7,078,020 (Patent)	79. 11/488,943 (Appl.)
2. 6,994,843 (Patent)	28. 7,033,575 (Patent)	54. 7,087,216 (Patent)	80. 11/500,736 (Appl.)
3. 6,780,399 (Patent)	29. 7,018,620 (Patent)	55. 7,087,217 (Patent)	81. 11/501,246 (Appl.)
4. 6,780,400 (Patent)	30. 7,048,909 (Patent)	56. 7,060,254 (Patent)	82. 11/504,419 (Appl.)
5. 6,716,415 (Patent)	31. 7,005,122 (Patent)	57. 7,070,763 (Patent)	83. 11/507,986 (Appl.)

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6. 6,855,310 (Patent)	32. 7,048,909 (Patent)	58. 7,070,764 (Patent)	84. 7,070,765 (Patent)
7. 6,783,753 (Patent)	33. 7,060,254 (Patent)	59. 7,070,765 (Patent)	85. 6,737,046 (Patent)
8. 6,716,416 (Patent)	34. 7,045,119 (Patent)	60. 7,063,830 (Patent)	86. 7,090,830 (Patent)
9. 6,743,415 (Patent)	35. 7,018,621 (Patent)	61. 7,169,378 (Patent)	87. 11/370,6287 (Appl.)
10. 6,740,307 (Patent)	36. 7,011,819 (Patent)	62. 7,067,114 (Patent)	88. 10/057,197 (Appl.)
11. 6,814,954 (Patent)	37. 7,014,840 (Patent)	63. 7,070,766 (Patent)	89. 10/146,086 (Appl.)
12. 6,884,408 (Patent)	38. 7,022,312 (Patent)	64. 7,063,831 (Patent)	90. 10/633,876 (Appl.)
13. 6,740,308 (Patent)	39. 7,014,841 (Patent)	65. 7,181,039 (Patent)	91. 10/633,877 (Appl.)
14. 6,776,978 (Patent)	40. 6,994,843 (Patent)	66. 7,087,218 (Patent)	92. 11/248,598 (Appl.)
15. 6,740,309 (Patent)	41. 7,008,616 (Patent)	67. 7,063,832 (Patent)	93. 11/370,628 (Appl.)
16. 6,814,955 (Patent)	42. 7,052,680 (Patent)	68. 11/439,475 (Appl.)	94. 11/398,383 (Appl.)
17. 6,716,417 (Patent)	43. 7,078,016 (Patent)	69. 11/442,917 (Appl.)	95. 10/719,540 (Appl.)
18. 6,737,043 (Patent)	44. 10/437,643 (Appl.)	70. 11/451,852 (Appl.)	96. 10/057,198 (Appl.)
19. 6,759,029 (Patent)	45. 10/719,899 (Appl.)	71. 11/451,853 (Appl.)	97. 10/146,088 (Appl.)
20. 6,803,031 (Patent)	46. 7,070,761 (Patent)	72. 11/454,573 (Appl.)	98. 7,108,847 (Patent)
21. 6,805,854 (Patent)	47. 7,070,762 (Patent)	73. 11/479,361 (Appl.)	99. 7,078,016 (Patent)
22. 7,029,658 (Patent)	48. 7,115,250 (Patent)	74. 11/479,509 (Appl.)	100. 7,060,255 (Patent)
23. 7,008,615 (Patent)	49. 7,094,392 (Patent)	75. 11/479,892 (Appl.)	101. 7,011,820 (Patent)
24. 7,018,619 (Patent)	50. 7,078,017 (Patent)	76. 11/481,279 (Appl.)	102. 6,783,753 (Patent)
25. 7,005,121 (Patent)	51. 7,078,018 (Patent)	77. 11/488,302 (Appl.)	103. 6,737,042 (Patent)
26. 7,045,118 (Patent)	52. 7,078,019 (Patent)	78. 11/488,932 (Appl.)	104. 11/670,892 (Appl.)

---- It is noted that Applicants have filed a Terminal Disclaimer over some of the above listed patents. However, the said Terminal Disclaimer has not been approved yet. Upon approval the rejection against the said patents will be withdrawn.

Response to Arguments

Applicant's arguments, filed 07/27/07, with respect to the rejection(s) of claim(s) 1-7 and 10-39 under Double Patenting have been fully considered, however, upon further consideration, a new ground(s) of rejection is made in view of other U.S. Patents and U.S. co-pending Applications.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 571-272-0615. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mina Haghghatian
Patent Examiner
August 16, 2007